No. 92-4308

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED: OCTOBER 4, 1993

DANIELA CHESLEREAN,

Petitioner,

v.

IMMIGRATION & NATURALIZATION SERVICE,

Respondent

_____/

ORDER

BEFORE: GUY and NELSON, Circuit Judges, and WELLFORD, Senior Circuit Judge.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of the court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

Upon consideration, the panel concludes, for the reasons stated in its earlier order, that the decision of the BImmigration Appeals in this case is not inconsistent with INS v. Cardoza-Fonseca, 480 U.S. 421 (1987). The panel further concludes that the Board's decision is not inconsistent with the decision of this court in Doe v. INS, United States Department ofJustice, 867 F.2d 285 (6th Cir. 1989). The latter case in Chinese National who had become a devout evangelical Christian following his arrival in the United States. Mr. Doe presented detailed and credible evidence supporting the reasonableness of his subjective fear that the government of the People's

Republic of China -- a government that is still in power, unlike the Ceausescu government in Romania -- would subject him to persecution because of his religion if he were to return to China. No comparable

evidence has been presented in the case at bar. The panel finds that all of the issues raised in the petition for rehearing were fully considered upon the original submission, and the petition is therefore denied.

ENTERED BY ORDER OF THE COURT

/S/

Clerk

APPENDIX E

STATUTES

The Immigration & Nationality Act of 1952, as amended:

Section 101(a)(42), 8 U.S.C.S. §1101(a)(42)

(42) The term "refugee" means (A) any person who is outside of any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationalityy, membership in a particular social group, or political opinion, or (B) in such circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act) may specifiy, any person who is within the country of such person's nationality or, in the case of a person having no nationality,

within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

Section 106, 8 U.S.C.S. §1105a - Judicial Review of Orders of Deportation and Exclusion (a) The procedure prescribed by, and all the provisions of chapter 158 of Title 28, United States Code, shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of deportation heretofore or hereafter made against aliens within the United States

pursuant to administrative proceedings under section 242(b) of this Act of comparable provisions of any prior Act, exept that--

(1) a petition for review may be filed not later than 90 days after the date of the issuance of the final deportation order, or, in the case of an alien convicted of an aggravated felony, not later than 30 days after the issuance of such order;

(3) . . . The service of the petition for review upon such official of the Service shall stay the deportation of the alien pending determination of the petition by the court, unless the court otherwise directs or unless the alien is convicted of an aggravated felony, in which case the Service shall not stay the deportation of the alien pending determination of the petition of the court unless the court otherwise directs.

(4) except as provided in clause (B) of paragraph (5) of this subsection, the petition shall be determined solely upon the

administrative record upon which the deportation order is based and the Attorney General's findings of fact, if supported by reasonable, substantial, and probative evidence on the record considered as a whole, shall be conclusive;

Section 208, 8 U.S.C.S. §1158 provides, in relevant part:

Asylum Procedure

(a) The Attorney General shall establish a procedure for an alien physically present in the United States or at a land border or port of entry, irrespective of such alien's status, to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee within the meaning of section 101(a)(42)(A).

(b) Asylum granted under subsection (a) may be terminated if the Attorney General, pursuant to such regulations as the Attorney

General may prescribe, determines that the alien is no longer a refugee within the meaning of section 101(a)(42)(A) owing to a change in cicumstances in the alien's country of nationality of, in the case of an alien having no nationality, in the country in which the alien las habitually resided.

Section 241, 8 U.S.C.S. §1251, provides in relevant part:

General Classes of Deportable Aliens

(a) Classes of Deportable Aliens.--Any alien (including an alien crewman) in the United States shall, upon the order of the Attorney General, be deported if the alien is within one or more of the following classes of aliens:

(1) Excludable at Time of Entry or of Adjustment of Status of Violates Status --

Section 243(h) of the Act, 8 U.S.C.S. §1253(h)(1)

(h) (1) The Attorney General shall not deport or return any alien other than an alien described in section 241(a)(4)(D) to a country if the Attorney General determines that such alien's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion.

19 U.S.T. 6223, 606 U.N.TS. 267, Jan 31, 1967

Article II

CO-OPERATION OF THE NATIONAL AUTHORITIES WITH THE UNITED NATIONS

1. The States Parties to the present Protocol undertake to cooperate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United nations which may succeed it, in the exercise of its functions,

and shall in particular facilitate its duty of supervisiong the application of the provisions of the present Protocol.

REGULATIONS

8 C.F.R. §3.1(b)(2) provides, in relevant part:

Appellate Jurisdiction

Appeals shall lie to the Board of Immigration Appeals from the following:

(2) Decisions of the Immigration Judges in deportation cases, as provided in part 242 of this chapter

8 C.F.R.8.3(b) provides, in relevant part:
(b) an application for asylum shall be deemed to constitute at the same time an application for withholding of deportation, pursuant to §§208.16, 236.3 and 242.17 of this chapter.

8 C.F.R. §208.13 provides, in relevant part:

(a) the burden of proof is on the applicant for asylum to establish that he is a refugee as defined in section 101(a)(42) of the Act. The testimony of the applicant, if credible in light of general conditions in the applicant's country of nationality or las habitual residence, may be sufficient to sustain the burden of proof without corroboration.

(b) the Applicant may qualify as a refugee either because he has suffered actual past persecution or because he has a well-founded fear of future persecution.

(1) Past persecution. An applicant shall be found to be a refugee on the basis of past persecution if he can establish that he has suffered persecution in the past in his country of nationality or last habitual residence on account of race, religion, nationality, membership in a particular social group, or political opinion, and that

he is unable or unwilling to return to or avail himself of the protection of that country owing to such persecution.

8 C.F.R. § 208.16(b) provides, in relevant part:

> Eligibility for withholding of deportation; burden of proof. The burden of proof is on the applicant for withholding of deportation to establish that his life or freedom would be threatened in the proposed country of deportation on account of race, religion, nationality, membership in a particular social group, or political opinion. The testimony of the applicant, if credible in light of general conditions in the applicant's country of nationality or last habitual residence, may be sufficient to sustain the burden of proof without cooroboration. The evidence shall be evaluated as follows:
>
> (1) The applicant's life or freedom

shall be found to be threatened if it is more likely than not that he would be persecuted on account of race, religion, nationality, membership in a particual social group, or political opinion.

(2) If the applicant is determined to have suffered persecution in the past such that his life or fredom was threatened in the proposed country of deportation on account of race, religion, nationality, membership in a particular social group, or political opinion, it shall be presumed that his life or freedom would be threatened on return to that country unless a preponderance of the evidence establishes that conditions in the country have changed to such an extent that it is no longer more likely than not that the applicant would be so persecuted there.

(3) In evaluating whether the applicant has sustained the burden of proving that his life or freedom would be threatened in a particualr country on account of race,

religion, nationality, membership in a particualr social group, or political opinion, the Asylum Officer or Immigration Judge shall not require the applicant to provide evidence that he would be singled out individually for such persection if . . .

8 C.F.R. §242.21 provides, in relevant part: (a) pursuant to part 3 of this chapter an appeal shall lie from a decision of a special inquiry officer under this part to the Board of Immigration Appeals. An appeal shall be taken within 10 days after the mailing of a written decision, or the stating of an oral decision, . . .